

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT DIVISION**

CASE NO.:

BRYAN E. GLYNN,

Plaintiff,

v.

VDC, INC. DBA CAPITOL CIGAR,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff BRYAN E. GLYNN by and through his undersigned counsel, brings this Complaint against Defendant VDC, INC. DBA CAPITOL CIGAR for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff BRYAN E. GLYNN (“Glynn”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Glynn's original copyrighted Work of authorship in his Work.
2. Glynn is a master of lighting with extensive experience in using both natural light and flashes to get spectacular results in any environment. Glynn also is the founder of CigarObsession (at www.cigarobsession.com) and the producer of one of the most popular cigar video review YouTube channels.
3. Over the years, Glynn has worked in different areas of photography including architecture, weddings, models, landscapes, concerts, sports, and tabletop. Glynn has won many awards, both local and National, and his photographs have been published in magazines and

newspapers across the country. Glynn's work can be identified at a glance for its crisp almost 3D look without using HDR; instead he uses off camera flash for dimension and pop, especially in his product work, which produces incredible details and dimension that stand out like a fingerprint for clients.

4. Defendant VDC, INC. DBA CAPITOL CIGAR ("VDC") is a premium cigar, tobacco and supply wholesaler in Michigan. At all times relevant herein, VDC owned and operated the website located at the URL www.capitolcigar.com (the "Website").

5. Glynn alleges that VDC copied Glynn's copyrighted Work from the internet in order to advertise, market and promote its business activities. VDC committed the violations alleged in connection with VDC's business for purposes of advertising and promoting sales to the public in the course and scope of the VDC's business.

JURISDICTION AND VENUE

6. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Defendant is subject to personal jurisdiction in Michigan.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

10. VDC, Inc. dba Capitol Cigar is a Michigan Corporation, with its principal place of business at 24625 Halsted Rd., Farmington Hills, Michigan, 48335, and can be served by serving its Registered Agent, Mr. Maysem Sabagh, at the same address.

THE COPYRIGHTED WORK AT ISSUE

11. In 2017, Glynn created the photograph entitled 151110ladcn0001, which is shown below and referred to herein as the “Work”.



12. Glynn registered the Work with the Register of Copyrights on January 21, 2017 and was assigned the registration number VAu 1-271-409. The Certificate of Registration is attached hereto as Exhibit 1.

13. Glynn's Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

14. At all relevant times Glynn was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANT

15. VDC has never been licensed to use the Work at issue in this action for any purpose.

16. On a date after the Work at issue in this action was created, but prior to the filing of this action, VDC copied the Work.

17. VDC copied Glynn's copyrighted Work without Glynn's permission.

18. After VDC copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its cigar, tobacco and supply wholesale business.

19. VDC copied and distributed Glynn's copyrighted Work in connection with VDC's business for purposes of advertising and promoting VDC's business, and in the course and scope of advertising and selling products and services.

20. Glynn's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

21. VDC committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.

22. Glynn never gave VDC permission or authority to copy, distribute or display the Work at issue in this case.

23. Glynn notified VDC of the allegations set forth herein on April 21, 2020. To date, the parties have failed to resolve this matter. A copy of the Notice to VDC is attached hereto as Exhibit 3.

COUNT I
COPYRIGHT INFRINGEMENT

24. Plaintiff incorporates the allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. Glynn owns a valid copyright in the Work at issue in this case.

26. Glynn registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

27. VDC copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Glynn's authorization in violation of 17 U.S.C. § 501.

28. VDC performed the acts alleged in the course and scope of its business activities.

29. VDC's acts were willful.

30. Glynn has been damaged.

31. The harm caused to Glynn has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendant VDC, Inc. dba Capitol Cigar that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff his actual damages and VDC's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Plaintiff be awarded pre and post-judgment interest; and

e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: September 23, 2020

Respectfully submitted,

/s/Joseph F. Yamin

JOSEPH F. YAMIN

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561.404.4350 – Telephone

561.404.4353 – Facsimile

Attorneys for Plaintiff Bryan E. Glynn

Exhibit

1

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Karen L. Clayton

Acting United States Register of Copyrights and Director

Registration Number

VAu 1-271-409

Effective Date of Registration:

January 21, 2017

Title

Title of Work: Cigar Photographs

Completion/Publication

Year of Completion: 2017

Author

- Author:** Bryan Glynn
- Author Created:** photograph
- Work made for hire:** No
- Citizen of:** United States
- Domiciled in:** United States
- Year Born:** 1974

Copyright Claimant

Copyright Claimant: Bryan Glynn
5318 Bob White Dr, Holiday, FL, 34690

Rights and Permissions

Name: Bryan Glynn
Email: bryan@bgpictures.com
Telephone: (727)946-1000
Address: 5318 Bob White Dr
Holiday, FL 34690

Certification

Name: Bryan E. Glynn
Date: January 21, 2017

Copyright Office notes: Basis for Registration: Unpublished collection

Exhibit

2

Home (/)

LA AROMA DE CUBA



PRODUCT DESCRIPTION

Model #: LADC NOBLE

Availability: Sold Out

Cigar Size: 6.5 x 52

Noblesse (Box of 24)

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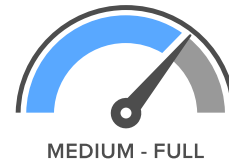
Country: 

Wrapper: Connecticut Broadleaf

Filler: Nicaraguan

Binder: Nicaraguan

Strength:



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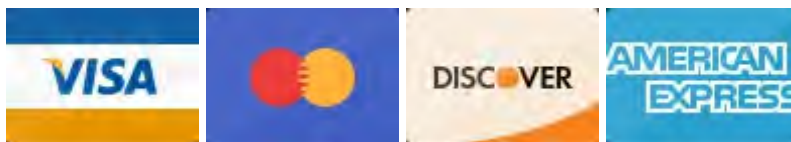


888.560.9063 (tel:888.560.9063)


24625 Halsted Rd., Farmington Hills, Michigan, United States

([https://www.google.com/maps/dir/Current+Location/24625 Halsted Rd., Farmington Hills, Michigan, United States](https://www.google.com/maps/dir/Current+Location/24625+Halsted+Rd.,+Farmington+Hills,+Michigan,+United+States))

orders@capitolcigarmi.com (<mailto:orders@capitolcigarmi.com>)



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Exhibit

3



Joel B. Rothman

Board Certified in Intellectual Property Law

Direct: 561.404.4335

joel.rothman@sriplaw.com

April 21, 2020

VIA EMAIL: orders@capitolcigarmi.com

Mr. Maysem Sabagh

Mr. Robert Sabagh

VDC, Inc. dba Capitol Cigar

24625 Halsted Rd.

Farmington Hills, MI 48335

Re: Glynn v. VDC, Inc. dba Capitol Cigar

Our File No.: 00248-0029

Dear Mr. Maysem Sabagh and Mr. Robert Sabagh,

We are a law firm making a claim on behalf of our client. We know that this is reaching you during a difficult and trying time and that you may have more pressing concerns. We appreciate that responding to this letter may not be your priority. However, we must receive a response from you so that we know that you are taking this matter seriously, even if you need more time to hire a lawyer or report this claim to your insurance carrier. If we hear from you then we can work with you to understand your position and resolve our client's claim. Please respond to us.

We write on behalf of our client Bryan E. Glynn, a photographer, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim.

Bryan E. Glynn ("Glynn")

Our client is an experienced professional photographer who makes a living from photography. Glynn is a master of lighting with extensive experience in using both natural light and flashes to get spectacular results in any environment. Glynn also is the founder of CigarObsession (at www.cigarobsession.com) and the producer of one of the most popular cigar video review YouTube channels.

Over the years, Glynn has worked in different areas of photography including architecture, weddings, models, landscapes, concerts, sports, and tabletop. Glynn has won many awards, both local and National, and his photographs have been published

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Los Angeles, CA 90067

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Boca Raton, FL 33433

125 Maiden Lane
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New York, NY 10038

Main: 561.404.4350
Fax: 561.404.4353
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Mr. & Mr. Maysem & Robert Sabagh
April 21, 2020
Page 2

in magazines and newspapers across the country. Glynn's work can be identified at a glance for its crisp almost 3D look without using HDR; instead he uses off camera flash for dimension and pop, especially in his product work, which produces incredible details and dimension that stand out like a fingerprint for clients.

Glynn retains all copyrights to his photographs. Glynn licenses his copyrighted Works, such as the one in this case, for commercial use.

In 2017, Glynn created the image entitled "151110ladcn0001", hereinafter referred to as the "Work."

The Work at issue is shown below.



Glynn registered the Work with the Register of Copyrights on January 21, 2017 and was assigned the registration number VAu 1-271-409, a copy of which is enclosed.

Infringement by VDC, Inc. dba Capitol Cigar ("VDC")

The infringement at issue was identified on February 13, 2020. We have enclosed contemporaneous evidence of the infringement by VDC.

You have employed our client's Work in at least the manner indicated in the evidence attached. Your unauthorized use commenced on at least the date indicated above. You are fully aware that the Work you used is our client's Work. No one from your company ever sought a license from our client to use the Work for any purpose.

You have copied, displayed and distributed our client's Work without permission, license or consent. The use of a creator's photographic image without written consent or

Mr. & Mr. Maysem & Robert Sabagh

April 21, 2020

Page 3

license violates the United States Code, Title 17, and The Copyright Act. The Copyright Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease and desist all unauthorized uses of our client's Work. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's Work, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

Damages

Copyright law provides several different elements of compensation to Glynn when a work is infringed or altered. Section 504 permits Glynn to recover actual damages plus “any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages,” or statutory damages of up to \$150,000 per work infringed if the registration predated the infringement. Glynn can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. Glynn's photographs are of the highest quality. Glynn's photographs are also scarce since he is one of the only sources of such quality photographs.

Glynn's damages are not limited to what he would have agreed to license the Work for prior to the infringement. Rather, Glynn's actual damages will be measured by the fair market value of the photograph considering VDC's use to sell and promote its business. Glynn's actual damages must be measured in light of VDC's use of Glynn's high quality and unique Work.

This is consistent with federal courts' approach to broadly construing the term “actual damages” to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, Glynn can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits Glynn to recover actual damages plus “any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.” Therefore, Glynn will also be

Mr. & Mr. Maysem & Robert Sabagh

April 21, 2020

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entitled to VDC's profits from the infringement, based upon the revenue VDC earned in connection with the use of Glynn's Work.

Alternatively, Glynn could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed if the registration predated the infringement. There is also the possibility that a judge or jury could determine that VDC's infringement was willful. If VDC's infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

Demand

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's Work, in any and all formats;
2. representative copies in any and all tangible form and media in which our client's Work was incorporated or employed; and
3. the source of the Work.

Upon receipt of this information we will consider and determine an appropriate amount required to be paid to our client in compensation.

Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a representative by May 5, 2020, we will take further steps to protect our client's rights. We look forward to your prompt response.

Sincerely,

SRIPLAW



Joel B. Rothman

JBR/bmb
Enclosures

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Karen Leigh Clayett

Acting United States Register of Copyrights and Director

Registration Number

VAu 1-271-409

Effective Date of Registration:

January 21, 2017

Title

Title of Work: Cigar Photographs

Completion/Publication

Year of Completion: **2017**

Author

• Author: Bryan Glynn
 Author Created: photograph
 Work made for hire: No
 Citizen of: United States
 Domiciled in: United States
 Year Born: 1974

Copyright Claimant

Copyright Claimant: **Bryan Glynn**
 5318 Bob White Dr, Holiday, FL, 34690

Rights and Permissions

Name: Bryan Glynn
 Email: bryan@bgpictures.com
 Telephone: (727)946-1000
 Address: 5318 Bob White Dr
 Holiday, FL 34690

Certification

Name: Bryan E. Glynn
 Date: January 21, 2017

Copyright Office notes: Basis for Registration: Unpublished collection

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LA AROMA DE CUBA



PRODUCT DESCRIPTION

Model #: LADC NOBLE

Availability: Sold Out

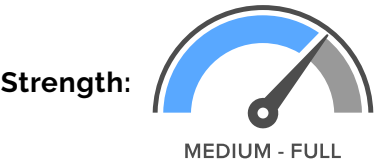
Cigar Size: 6.5 x 52

Noblesse (Box of 24)



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Wrapper: Connecticut Broadleaf
Filler: Nicaraguan
Binder: Nicaraguan



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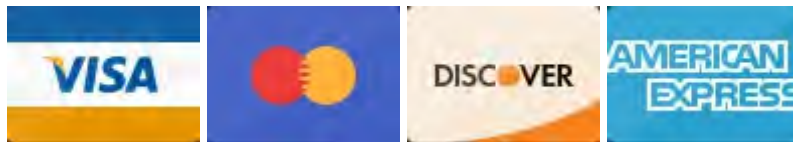
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